IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

SUMMONS FOR JUDGMENT NO.94 OF 2006

IN

SUMMARY SUIT NO.733 OF 2003

Minaxi Kishore Mehta ...Plaintiff

v/s

P. and P. Containers Ltd. and ors. ...Defendants

Mr B.B. Saraf with Ms S. Shaikh i/b M/s S.K. Srivastava and Co. for Plaintiff.

Mr N.P. Dalvi i/b M/s C.R. Naidu and Co. for Defendant No.1.

CORAM : D.K. DESHMUKH J.

DATE : 3RD JULY 2006.

P.C. :-

1. The plaintiff has filed this suit for recovery of the amount which was advanced to the defendants as loan on the basis of agreement dated 15th February 2000. Only two objections are raised on behalf of the defendants. The first objection is that the original plaintiff has died and therefore, in view of the provisions of Indian Succession Act, this suit cannot be entertained. In this very suit, however, in chamber summons No.880 of 2005 an order dated 31st August 2005 is passed after considering this aspect. In my opinion, therefore, this suit can proceed. The second objection that is raised is that the transaction is not loan transaction. The case of the plaintiff is that she had advanced the loan to the defendants. Though the defendants claim that the plaintiff was carrying on moneylending business, no evidence has been produced by the defendants to substantiate that claim. As there is no dispute between the parties that money was actually advanced by the plaintiff to the defendants, in my opinion, there could be no defence available to the defendants. The defendants are not entitled for leave to defend. Summons for judgment is granted and the suit is decreed in terms of prayer clause (a). Refund of

court fee as per rules.

. Parties to act on the copy of this order duly authenticated by the Associate / Private Secretary as true copy.

. Certified copy expedited.